

## Rulemaking Process

### **Procedure for Adopting Rules**

The promulgation process is quite complicated. To begin the process, an agency must serve a copy of the rules, materials incorporated by reference, and an admission of service to the department secretary, bureau commissioner, or constitutional officer of the department to which it is attached. The agency then gets written authorization to proceed.

Upon receiving written approval and at least 20 days prior to the hearing, the agency must serve the Legislative Research Council (LRC) and the Bureau of Finance and Management with an admission of service, notice of hearing, fiscal note, impact statement on small business, and the proposed rules. Also, at least 20 days prior to the hearing, the agency must publish the notice of hearing and send the notice to interested parties.

Once notice has been given, the agency must accept comments from the public and the LRC. To allow for input from the public, the agency must hold a hearing to "afford all interested persons reasonable opportunity to submit data, opinions, or arguments, either orally or in writing, or both, at a hearing held for that purpose." The comment period must be kept open for 19 days following the hearing. However, if the agency adopting the rules is a board, commission, or other multi-member decision maker, the comment period is closed at the end of the hearing unless specifically continued to take additional comments.

After the comment period is complete, the adoption process may begin. The agency may make changes after consideration of the comments received by the public as long as those changes concern matters contemplated by the notice of hearing. The agency must also make any changes required by the LRC. The rules must be signed by the person with the authority to adopt them. The agency must then serve the minutes of the hearing, a complete record of written comments, and a corrected copy of the rules on the members of the Interim Rules Review Committee at least 5 days before presenting the rules to the Interim Rules Review Committee.

The agency must file the corrected rules with the LRC and obtain signatures from the LRC approving the form and style, legality, and any incorporations by reference. The agency must present the rules to the Interim Rules Review Committee. After the presentation and with the necessary signatures obtained, the agency may file with the Secretary of State: the original certificate; a copy of the rules; a copy of the signature sheet; and that the agency has complied with the requirements. This filing must occur within 61 days after the agency's rule-making process is deemed complete by the Interim Rules Review Committee. The rules are provisionally effective on the 20th day after being filed with the Secretary of State, and finally effective on the first of July after the next legislative session.

### **Interim Rules Review Committee**

The Interim Rules Review Committee may declare that the rule-making process is complete to the satisfaction of the committee, revert the rule to an earlier step in the rule adoption procedure to consider an amendment to the proposed rule, or move to suspend the proposed rule.

A rule which is provisionally effective or is not yet effective may be suspended by the Interim Rules Review Committee prior to the first of July after the next legislative session. To suspend a rule, the committee must adhere to the following procedure:

Give the agency which promulgated the rule at least two weeks' notice of a hearing on the proposed suspension;

Hold a hearing, which may be in conjunction with a regular committee meeting. At the hearing, the burden of proof that the rule is necessary and does not violate any constitutional or statutory provision or the legislative intent when authority to promulgate the rule was given, is on the agency; and

File an appropriate resolution of such action with the Secretary of State. The suspension is effective from the date of the filing. A suspended rule remains suspended until July first of the year following the year in which it became, or would have become, effective, and may not be enforced during that period.

### **Emergency Rulemaking**

There is a special abbreviated procedure for promulgating emergency rules. The agency must serve the head of the department, the LRC, and the Interim Rules Review Committee with the proposed rules, any materials incorporated by reference, a statement of necessity for the emergency procedure, and notice of intent to adopt emergency rules. The agency must publish a notice of intent to adopt emergency rules as it would a notice of hearing and send the notice to interested parties.

The LRC must review the statement of necessity for the emergency for sufficiency of the reasons. The agency is required to provide a statement explaining "that the emergency procedure is necessary because of imminent peril to the public health, safety, or welfare, is necessary to prevent substantial unforeseen financial loss to state government, or is necessary because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such event by the emergency procedure is required to secure or protect the best interests of the state or its residents." If the statement does not meet that standard, the emergency cannot be approved.

In order to adopt emergency rules, the agency must make any changes required by the LRC, have the rules signed by the person or a majority of the body with authority to adopt them, file the rules with the LRC, obtain signatures for form and style and legality, and file any material concerning incorporations by reference. Three (3) days after the publication of notice and if all signatures have been obtained, the agency may file the rules with the Secretary of State. No more than 30 days may elapse between the first service on the LRC and filing with the Secretary of State. The rules are provisionally effective immediately upon filing with the Secretary of State but are void 90 days later.

### **South Dakota Register**

### **South Dakota Administrative Procedure Act**